

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY  
AT THE TIME OF FILMING. IF AND WHEN A  
BETTER COPY CAN BE OBTAINED, A NEW FICHE  
WILL BE ISSUED.

ORIGINAL PAGINATION IS NOT COUNTINUOUS.

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1989

JOHN EDWARD SWINDLER, )  
 )  
 PETITIONER )  
 )  
VS. )  
 )  
 )  
A. L. LOCKHART, DIRECTOR OF )  
ARKANSAS DEPARTMENT OF )  
CORRECTIONS, )  
 )  
RESPONDENT )

No \_\_\_\_\_

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
APPEALS FOR THE EIGHTH CIRCUIT

APPENDIX VII  
Voir Dire of Veniremen  
Thomas Bricksey  
Henry Sunderman  
Thuman Jones

THURMAN RAGAR, JR.  
Attorney for Petitioner  
P.O. Box 796  
Van Buren, Arkansas 72956-0796  
(501) 474 5994

that were asked of you or the answers that you gave. What we are trying to do, and I hope you will all understand this, is try to make a jury based upon the individual opinion and knowledge of each individual juror. So the Court must request that after you are examined that you do not discuss what your examination consisted of while you were here. We are going to move along in just a few moments, and we will try to move along as quickly as we can. So thank you very much, and I felt it was necessary to tell you that since I had overlooked it before. All right, let's call the first juror, please.

VOIR DIRE EXAMINATION OF HENRY SUNDERRMAN

BY MR. LARR:

- Q. Mr. Sunderman, do you know anything at all about the facts of this case?
- A. Only what I have read in the newspaper and TV.
- Q. Have you read quite a bit and seen quite a bit on TV about it?
- A. Some little bit, yes.

- Q. From what you have read and seen, do you have any opinion as to how the case should be decided?
- A. No, I don't.
- Q. Have you ever served on a jury before?
- A. Yes.
- Q. When was that?
- A. This would be approximately, oh, 1972.
- Q. Was that here in Scott County?
- A. No, it was in Polk County.
- Q. What kind of jury did you serve on? Was it on a criminal case?
- A. It had to do with DWI, I believe.
- Q. Do you recall what the jury verdict was in the case?
- A. It was a hung jury.
- Q. Where do you work?
- A. For SWEPSCO here in Waldron.
- Q. How long have you worked for them?
- A. For sixteen years.
- Q. How long have you lived in Scott County?
- A. Since January of 1974.
- Q. Do you know whether you or any member of your family has ever been a party to a lawsuit, either criminal or civil, or have you ever been a witness in any lawsuit?

A. No.

Q. In a criminal case of this type the State of Arkansas has the burden of proof to prove a defendant guilty beyond a reasonable doubt. And that is a burden that we, representing the State of Arkansas, accept, and the defendant does not have any burden at all. He does not have to prove to the jury that he is not guilty, or he does not have to prove or disprove anything that we prove. If you were selected on the jury can you accept that fact, or would you want to require the defendant to prove his innocence?

A. I would make my decision based upon the facts.

Q. Okay, on the facts that we as the State of Arkansas put on?

A. Yes.

Q. You would not require the defendant to put on any evidence to prove that he was innocent?

A. No.

Q. You would leave the entire burden with the State of Arkansas where it is by law, is it?

A. Yes.

Q. Do you believe in the death penalty?

A. Yes.

Q. Do you think that sometimes it is an end down on crime to keep some people from committing crimes that would otherwise?

\*\*\*

A. I feel that it is a deterrent, yes.

Q. And from having served on the jury involving D.I. or something, you know that under the law of Arkansas the jury not only determines guilt or innocence of the defendant, but the jury also fixes punishment; that is not left up to the Judge. Do you realize that?

A. Yes, I do.

Q. If you were selected on this jury and you served, at the end of the trial after hearing all of the evidence, and after hearing the law that the Judge gives you, if you found this was a proper case for the death penalty under Arkansas law, could you and would you vote to impose that penalty?

A. Yes, I would.

Q. Do you know of any reason why you could not serve on this trial and give a fair trial to both the State and the defendant?

A. No, I do not.

MR. KARR: That's all.

BY MR. SETTLE:

Q. Mr. Sunderman, how old are you?

A. Forty-one.

Q. Are you married, sir?

A. Yes.

Q. Do you have children?

A. Yes.

Q. How many children do you have?

A. Two.

Q. How old are they?

A. One age nine, and one age fourteen.

Q. A boy or girl?

A. The boy is nine, and the girl is fourteen.

Q. I believe you stated that you read or heard a little bit from the media on this case.

A. Yes, I have.

Q. Would you mind telling me what you had heard, what you remember?

A. Well, I remember that the altercation that took place, to the best of my recollection, was at a service station, and of course I remember the names that were mentioned, and the TV and news accounts of this.

Q. Okay, what names were mentioned?

A. The names that I remember being mentioned were Randy Barnett and Mr. Swindler.

Q. All right, now did you watch the television?

A. Yes, I did.

Q. Okay, now you were living here in Scott County at that time?

A. Yes, I was.

Q. How, do you live in town?

A. Yes, I do.

Q. Do you get the cable?

A. Yes.

Q. Which station were you watching on that?

A. To the best of my recollection, Channel 5.

Q. Okay, how long do you feel you watched those reports?

A. Well, as a general rule, I usually watch Channel 5 news every day.

Q. Did you read the newspaper accounts?

A. I wouldn't say that I read them every day, but I usually look through the paper. I don't read a newspaper, I would say, as closely as I watch TV. So I wouldn't say that I read the news accounts of it every day, but I did watch TV every day.

Q. All right, did you remember anything about the defendant's background, where he came from, or anything like that?

A. Yes, I think I do.

Q. All right, would you tell me what you remember, please?

- Q. To the best of my recollection, I remember that he, Mr. Bulfinch was from North or South Carolina. I remember that there were some charges, to the best of my recollection, that had been brought against him in that state.
- Q. Do you remember what those charges were?
- A. Really I don't. To the best of my recollection, it was some sort of assault charges.
- Q. You don't know anything more about it than that?
- A. Not to my recollection, I don't remember anything other than that.
- Q. Okay, did you talk to anyone about this case at that time?
- A. Yes, to the best of my recollection, I think, you know, it was discussed, yes.
- Q. Did anyone express an opinion about the case?
- A. Yes.
- Q. What did they say?
- A. The ones that discussed it with me, particularly, I would say, you know, after the trial that they were convinced.
- Q. All right, now at the time that happened did you discuss it with anyone?
- A. Well, there again, to the best of my recollection,

it was discussed, and I don't remember any of the details of the discussion, but I think it would be like any other news item, that it was talked about.

- Q. All right, now did people, again did people state opinions to you that at that time, at first?
- A. To the best of my recollection, yes, they did.
- Q. Do you remember what those opinions were?
- A. The majority of them were that they felt that he was guilty.
- Q. Did anyone state to you that their opinion was that he was not guilty?
- A. Not to my recollection.
- Q. All right, did you ever express an opinion to these people when you were discussing the case with them?
- A. To the best of my recollection, I would say that I probably did, yes.
- Q. All right, what do you recall that opinion to be?
- A. At that particular time I feel that I was of the opinion that he was guilty.
- Q. All right, is that your opinion at this time?
- A. I did not hear all of the evidence at that time, and based on what I did hear at that particular time I had an opinion at that time; at this time I would have my opinion on the evidence that was



presented.

Q. All right, now did you follow the reports of the case when it was first tried?

A. Oh, well, to some degree, yes.

Q. Did you feel that the findings of that jury had some relevance?

A. Well, I feel like that any jury that hears the evidence that is presented to them, I feel like, you know, twelve people come to the same conclusion, that I feel like, you know, they have made a decision based on what the facts that they were aware of.

Q. Well, what I am asking you is, do you feel like because they came to that conclusion that the defendant may well be guilty?

✓ A. I would say yes.

Q. You would say that?

A. Yes.

Q. All right, that is an opinion that you have?

A. I have the opinion that the twelve, based on the facts that were presented to them, made a decision based on those facts, yes.

Q. All right, now then if you were selected for the jury would you require the defendant to present evidence to set aside that opinion?

A. Well, as I said before, I had my opinion at that

time, and I feel like if I sit on any jury it would be my duty to make my decision at that time, based on the facts that were presented to me, not what had been presented somewhere else.

Q. All right, in other words you are saying that you would only consider what was being presented to you?

A. Yes.

Q. You would not be considering what another jury had considered, what their verdict was, or anything like that?

A. No.

Q. Now, of course, you stated that you had read these reports, at one time you did form an opinion?

A. Yes, I did.

Q. All right, now if you were selected to the jury do you feel as you were listening to the evidence that that prior opinion would prevent you from, oh, weighing the evidence? Do you think it would get in the way of your deliberations?

A. Well, I would hope not. Now, like I say, I think I cannot tell you that a thought would not cross my mind.

Q. All right, now if that thought did cross your mind

would you report that to the Court that you could not keep the prior opinion out of the way of your deliberations?

A. I think that would be my duty, yes.

Q. Okay, do you feel that you might compare whatever evidence was presented in court to whatever you heard from the media?

A. I would do my best not to.

Q. But do you believe you would be able to not compare the evidence?

A. I don't think I could tell you without a shadow of a doubt that I would not.

Q. What I am asking you is, do you feel you could just listen to the evidence as presented in court and not consider the other evidence?

A. To the best of my recollection, I don't recollect what the evidence was.

Q. Well, the reports or anything like that?

A. Well, you mean if I was asked the question if I were presented reports that were made by the police?

Q. No, sir, what I am referring to, I think, is that if you were selected for the jury, testimony presented by the witnesses, would you be able to just consider that testimony, that evidence presented in this courtroom and not allow any other notion or opinions that you might have had before-

hold us to our burden of proving his guilt beyond a reasonable doubt?

A. Well, sure.

Q. On the other side of the coin, you would not require him to prove that he is innocent?

A. Well, I think you know, you would have to base it on facts either way you went.

Q. Right, you would have to base your decision on the evidence that is presented in court. What I am asking about is this burden of proof thing. You would require us as the State of Arkansas to prove him guilty, and on the other side of the coin, you would not require him to prove that he is innocent? The entire burden is on the State in this case.

A. Well, he would have to prove he is innocent if you saw him innocent. I mean, if that answers your question.

Q. Well, if the State does not prove him guilty then he would be in his natural right. But he would not have to prove he was innocent, it would be us failing to meet our burden of proof. So I am just asking you, would you require us as

the State of Arkansas to prove him guilty and not require him to prove that he is innocent?

A. Well, I think you would have to prove he was guilty.

THE COURT: Let me see if I can help without interjecting too much. Under the law that you will be instructed about if you are a member of the jury, as Mr. Karr has said the burden of proof is entirely upon the State of Arkansas to prove the guilty of any defendant beyond a reasonable doubt. You fully understand that?

A. Yes.

THE COURT: Under the law any defendant in a proceeding of this nature is presumed under the law to be innocent. Do you understand that?

A. Yes.

THE COURT: All right, now under the law, then, and this is the law, and I am going to ask you if you can accept it and follow it; under the law then the defendant would be under no burden to prove his innocence, since the burden is upon the State to prove his guilt. Do you understand that? A-65

A. Yeah, you are right.

THE COURT: All right, therefore he is under no duty to put on any evidence to establish his innocence or to refute his guilt, as he wishes. And that is the law, in cases of this nature. Now, if you should be selected to serve on the jury could you and would you require the State of Arkansas to prove him guilty beyond a reasonable doubt before you would convict him?

A. That's right; yeah, you would have to do that.

THE COURT: All right, and the Court is telling you under the law he is presumed to be innocence, and he is under no duty to offer any evidence in his behalf, and can you accept that as being the law?

A. Uh huh.

THE COURT: You would not hold it against him if he should elect not to put on any evidence, but base your verdict



solely upon whether or not the State has proved his guilt to your satisfaction beyond a reasonable doubt?

A. Yeah, I would have to go by that.

THE COURT: You can accept those principles of law, and will follow them if you are selected on the jury?

A. That's right.

THE COURT: All right, Mr. Karr, go ahead and continue. I thought I might help.

BY MR. KARR:

Q. Is there anything about serving on this case if selected on the jury that would cause any particular hardship for you, that would keep you from devoting the attention to it that it deserves?

A. Not that I know of.

Q. Do you know of any reason why, if you were selected to sit on this jury, you could not give a fair trial to both the State of Arkansas and the defendant?

A. No, sir.

MR. KARR: That's all.

BY MR. SETTLE:

Q. All right, now Mr. Staggs, I believe you stated you heard a few of the reports and the accounts in the media, television. Didn't you tell Mr. Karr

that you had heard a little bit about this case?

A. Right, sir.

Q. Let me just ask you this. Do you recall those accounts, do you recall what was reported?

A. Well, I just saw some of the skits on TV. I read the newspaper.

Q. Which newspaper was that?

A. The Fort Smith Times Record.

Q. Do you get the Fort Smith paper?

A. Yes, sir.

Q. Do you live in town?

A. Uh huh.

Q. Are you on cable?

A. No, sir.

Q. You just get Channel 5?

A. Yes.

Q. Did you follow these accounts very closely?

A. No, sir, because I worked evening and nights a lot and I don't catch it all.

Q. Would you tell me what you remember?

A. Well, I couldn't really right off, more than just you know, it come in on the news about this incident that happened.

Q. Just go ahead and tell me what you know.

A. Well, I couldn't say I could tell you all I knew, but I do remember, you know, just when it come

in on the news about a policeman getting shot, and really I didn't keep up with a lot about the trial situation. I did some, but I couldn't offhand tell you. That's all I did.

Q. All right, do you remember anything else except a policeman being shot?

A. Well, I kept up, you know, and saw they caught a person.

Q. They caught the person?

A. Well, they got him.

Q. Well, which person was that?

A. Well, the person they said did it.

Q. Which person was that?

A. That was Swindler.

Q. You mean the defendant?

A. Uh huh.

Q. All right, did you discuss this case with anybody?

A. Oh, I probably did some with my wife.

Q. Did other people discuss it with you? Besides your wife?

A. Oh, I wouldn't say I didn't some, but not a lot.

Q. Did anyone express an opinion to you about this case, about how it should be decided?

A. No.

Q. You don't recall anybody saying that they thought he was guilty, or anything?

A. Well, I don't believe, I don't believe I heard anyone just come out and say they believed it.

Q. Did anyone ever express an opinion to you that he was not guilty?

A. No.

Q. Did you ever express your opinion to anyone else?

A. No, I really didn't.

Q. Okay, did you get any information on where the defendant came from, where he had been before, or anything like that?

A. No. I did hear about another incident or two, someone was telling me, but I don't remember where it was at.

Q. All right, why don't you go ahead and tell me about that?

A. Well, I just heard there was two more people that had been killed by him.

Q. Had been killed by him?

A. That's true.

Q. Did someone tell you about that?

A. I don't believe I read it, I believe someone did. I don't know whether they was talking directly to me, or just some people in a conversation was

had, but I do remember vaguely.

Q. All right, based on that, have you formed an opinion in this case?

A. Well, I would just have to form it on what you heard, I mean, you know, you hear these things. I won't say that I said it either way, because something like that you see on the news. I guess if I would say the way I saw it, probably most of the time you think well, it happened, or, you know, they wouldn't be putting it out. But just as far as really coming down and saying you knew it did, you couldn't say that.

Q. But did you have an opinion about this case, based on what you had heard?

A. I don't know, you might call it an opinion. You hear these things and, well, we have to - what's going on, you don't believe it is all false; you believe there are some facts about it.

Q. All right, I guess I am going to have to ask you to try to respond to my question the best you can, because I think you might be having a little difficulty with it. I am asking whether based on all you've heard, and all the discussions or whatever, after that if you formed an opinion, whether you knew anything about it or not, have

you ever talked to anybody about this that said they had first-hand knowledge about the incident?

A. No, sir.

Q. I am just asking you then, based on what you heard did you form an opinion about this case as to the defendant's guilt or innocence?

A. Well, I would have to say based on what I have heard, and the belief of the people, I would have to have a little bit of an opinion.

Q. What would that opinion be?

A. Well, it would have to be like it came out.

Q. Do you have that opinion at this time?

A. Yes, I guess you would say, to an extent. Not that I couldn't change it if it was different, but I still believe, you know, you would have to have some confidence in the people.

Q. Is that a fixed opinion, you feel you would have difficulty getting rid of that opinion?

A. No, I can accept facts.

Q. All right, and would you require the defendant's side of the case to put on evidence, or some sort of evidence to change that opinion that you have?

A. Would you repeat that?

Q. I am asking you, would you require something from



the defendant's side of the case before you would change the opinion that you have?

A. No. If I was on the jury I could listen, you know, to the trial; and if there was a difference, I wouldn't pay any attention to my opinion because if I listen to that I will listen to the facts that are brought out.

Q. All right, now if you were selected for the jury do you believe that you would be able to listen to the evidence and just not consider anything else you may have heard?

A. Right, that's the only way I would listen.

Q. Do you believe that you would be able to avoid comparing what you had heard with whatever you had heard prior to coming into court? In other words, just consider what you heard in court?

A. Right.

Q. You would not compare the State's evidence, or whatever the evidence might be with what had been reported?

A. I would only want to hear what went on at the present.

Q. Now, if you felt that the opinion was making it

difficult for you while you were deliberating on the case, after the case was presented to you, and you felt you were having difficulties getting rid of your opinion, or your opinion was conflicting with what the evidence had been, do you feel you could report that to the Court, the Judge?

A. I wouldn't serve on it if I couldn't drop my opinion; I wouldn't go with a thought either way.

Q. All right, now in this case I anticipate that the State will call as witnesses some police officers. Now, would you be giving their testimony any greater weight than private citizens' testimony?

A. No.

Q. You would just consider their testimony on an equal basis of another person's testimony?

A. Right, I would have to be fair.

Q. Do you know any police officers, sir?

A. Just local here.

Q. Are you related to any?

A. No, sir.

Q. Have you ever discussed this case with anybody or any police officers that have ever expressed an opinion to you about it?

A. No.

Q. Do you feel like if you were a member of the jury



and owe, whether the jury brought back a guilty or not guilty verdict you would owe any explanation to any officer?

A. No, sir.

Q. All right, now it may come in the testimony that is presented in court that the Court may decide that it is appropriate to instruct the jury on what we call lesser included offenses. Now, this would be in the homicide area. The most serious offense is capital felony murder. That is what the defendant is accused of. The next most is first degree murder, and then there is second degree murder, and manslaughter. Of course, it would depend on what the Court would feel appropriate. Now, as the Court has decided to instruct the jury on these lesser offenses, could you as a juror consider these lesser offenses?

A. Certainly.

Q. Now, I know Mr. Karr discussed the procedure. Now, just assume for the purpose of this question, it is hypothetical, that if you were selected as a juror that you as a member of the jury, and the jury in all, decided to vote the defendant guilty. Now, that is the first step. The second step, of course, is to decide on the punishment. Now, there

are two possible penalties. First if life without parole, and the second is the death penalty. Now, do you feel that if the evidence were presented to you, and you got to this point, that you could consider the life without parole as an alternative, or do you feel you could consider it equally with the other penalty?

A. Right.

Q. You wouldn't weigh one over the other?

A. Not based on the facts, it would be the best of my knowledge.

Q. You would require the State to prove its case beyond a reasonable doubt?

A. Right.

Q. Okay, now, Mr. Staggs, referring back to the penalty stage, now if you were considering on the penalty to be imposed do you believe that you could set aside anything you may have heard and consider only what was presented in court?

A. Right.

Q. You could set aside whatever someone else told you about the defendant's background and just consider what's here?

A. Yes, to the best of my knowledge, what I gathered here.

Q. Let me just ask you a couple of general questions.  
How long have you lived in Scott County?

A. All my life, more or less.

Q. What sort of work do you do?

A. I work for Val-Mac Industries in poultry.

Q. How long have you worked there?

A. Seventeen years.

Q. Are you married?

A. Yes, sir.

Q. Do you have any children?

A. Four.

Q. How old are they?

A. About 22, 20, 16 and 10.

Q. How old are you, sir?

A. Forty-nine.

Q. Do you feel you can give the State of Arkansas  
and the defendant a fair trial in this case?

A. Yes, sir.

MR. SETTLE: Pass the juror.

MR. KARR: Mr. Staggs is good for the  
State.

MR. SETTLE: Your Honor, I will submit this  
man for cause. He has an opinion,  
and I believe he should be disqualified.

THE COURT:

MR. SETTLE:

THE COURT:

You will be overruled.

Note my exceptions.

Your Honor, this juror is good.

All right, Mr. Staggs, you have  
been now selected for the jury and  
we are still in progress, of course,  
in making our jury and what our  
plans are is to, we do not intent  
to start the testimony in the case  
until Monday morning. So I am  
going to excuse you. The attorneys  
have agreed that in order to keep  
the jurors from waiting around that  
they may be excused until the testi-  
mony starts. There is always the  
possibility that we cannot even start  
Monday, but that is what we are  
aiming toward. So I am sure you  
fully realize the great importance  
of the fact that since you are a  
member of this jury that certainly  
you should not permit any person  
under any circumstances whatever to  
try to discuss this case to you, ex-  
press any opinion to you, or anything

think that knowing that those are two alternatives and that under the evidence you could vote for either one of them after you find him guilty, do you think you could still consider it and find him guilty, knowing that those are the two possible punishments?

A. I could not if I knew the man was going to be put to death, I would not; I am just against the death penalty, because it is something that is final, it cannot be revoked.

Q. Are you telling us that you don't think that you can consider the death sentence in this particular case under any circumstances?

A. No, I could not. I do not believe in capital punishment.

MR. LANGSTON: I believe that is all the questions I have.

THE COURT: All right, the Court will excuse you.

MR. LANGSTON: Save my exceptions, Your Honor.

# VOIR DIRE EXAMINATION OF THOMAS BRICKSEY

BY MR. KARR:

Q. Mr. Bricksey, do you know anything about the facts of this case?

A. Oh, yes.

Q. Where did you get your information?

A. Newspapers, television, radio.

Q. Have you followed it fairly closely since it happened back in 1976?

A. Yes, sir, you can't avoid it.

Q. Based upon what you have seen, heard and read have you formed an opinion now as to how this matter should be decided?

A. Yes, sir, I think so.

Q. Is that opinion so fixed in your mind that you could not set it aside and if you were selected on the jury to just base your decision on what happens in this courtroom?

A. Do you mean could I be impartial, yes, I could.

Q. All right, you understand it is natural for someone to form an opinion when they read about something like this based on what they read and hear. And there is nothing wrong with that at all. But if that opinion becomes so fixed in your mind that you could not set it aside and disregard it if you were selected on this jury, then you probably could not serve. But if the opinion is not so fixed that you could lay it aside, and then come into the courtroom and just base your decision on what happens in court, then you would be an acceptable juror. And do you think



that is your situation, that you could set aside your opinion and listen to the evidence and the instructions from the Judge, and the base your decision just on what happens here?

A. Yes, sir, I probably could.

Q. Where do you work, Mr. Bricksey?

A. I am self-employed, mainly as a house-painter.

Q. How old are you?

A. Forty.

Q. Are you married?

A. Yes, sir.

Q. Do you have children?

A. Yes, sir.

Q. How many?

A. Two.

Q. What kind?

A. Two girls.

Q. Their ages?

A. Fifteen and sixteen.

Q. Do you believe in the death penalty?

A. Yes, sir.

Q. Do you believe it is proper punishment for some crimes?

A. Yes, sir.

Q. Under Arkansas law the Jury not only determines

not only whether the defendant is guilty or innocent, but the Jury also fixes the punishment when they convict someone. And do you understand that; that is not left up to the Judge in our system?

A. Yes, sir.

Q. And in a trial like this where the defendant is charged with capital murder there are two possible penalties, one is death and the other is life imprisonment. But it is not up to the Jury to just select one or the other as they choose, but we have a two-stage trial. It is really like two trials in one, and the first part of it is only concerned with the guilt or innocence of the defendant. Now if the jury finds the defendant guilty beyond a reasonable doubt, then we come back into court and we go into the second part of the trial, and that is the part where we get down to the penalty. And then when we get into that phase of the trial we present evidence about aggravating circumstances and mitigating circumstances. And the aggravating circumstances are things that make this case more serious than another one



just like it. And mitigating circumstances are things that make this case less serious than another one just like it. And then the jury balances the two of those, and if they find that the aggravating circumstances outweigh the mitigating circumstances then that is a proper case for the death penalty. Now if you were on this jury and you made that finding, could you and would you vote to impose the death penalty?

A. Yes, sir.

Q. You understand that each of the twelve jurors it has to be their verdict, and they have to sign the verdict, and come back into open court and announce that as their verdict?

A. Yes, sir.

Q. Under our law a defendant is presumed innocent until they are proven guilty beyond a reasonable doubt in court. Now, do you accept that legal principle as a basic part of our judicial system?

A. Yes, sir.

Q. Can you give that presumption of innocence to this defendant in this case? Do you know of any reason why you cannot?

A. No, sir.

Q. Just as a legal matter, he is presumed to be innocent right now, and you accept that?

A. Yes.

Q. Now, we as the State of Arkansas have the burden of proving a defendant guilty beyond a reasonable doubt in court. And converse to that, the defendant does not have any burden at all. He does not have to prove his innocence; he does not have to disprove anything that we prove about him. Do you know of any reason why you could not hold us, the State of Arkansas, to our burden of proving him guilty beyond a reasonable doubt?

A. No.

Q. You understand that he does not have to offer any evidence to prove that he is innocent, and if he does not offer any evidence you cannot hold that against him, but you would require us to prove him guilty?

A. Yes, sir. I understand that.

Q. Do you know of any reason why you could not sit on this jury and give a fair trial both to the State of Arkansas and the defendant?

A. No, sir.

MR. KARR:

That's all.

BY MR. SETTLE:

Q. Mr. Brickney, am I pronouncing your name correct?

A. Yes, sir.

Q. How long have you lived in Scott County?

A. All my life other than military service.

Q. All right, which service were you in?

A. The Air Force.

Q. Do you work here in Scott County?

A. Yes, sir.

Q. What sort of work do you do?

A. Oh, mainly painting, repairs.

Q. Do you get the cable television?

A. No, sir.

Q. What stations do you receive?

A. 2, 6, 5 and 8, and educational channel, too.

Q. Now, where are 2 and 6 from?

A. Tulsa.

Q. Both of them from Tulsa?

A. Yes.

Q. Okay, do you get the Fort Smith paper?

A. No, sir.

Q. Do you get the local paper?

A. Yes, sir.

Q. Do you occasionally read the Fort Smith paper?

A. Oh, yes.

Q. About every day, or just occasionally, or what?

A. On the average of once a week.

Q. All right, now I believe when Mr. Karr was questioning you he asked you some questions about whether you knew anything about the case, and you indicated that you did know something about it, and that you heard some of the accounts. Can you tell me what you remember from these accounts?

A. All of it?

Q. Yes, sir.

A. Well, I remember when the case first started, when Mr. Barnett was killed, and about the subsequent events inasmuch as the defendant abandoned his vehicle, and ran away from the scene, and things that occurred after that. Also, about the first trial.

Q. All right, you remember what the verdict was at the first trial?

A. Oh, yes.

Q. You read about that?

A. Yes, sir.

Q. Well, what happened in the first trial, would that have any affect as to what was happening here?

A. Well, I am sure it would, but the question was could I render an impartial verdict, which I

think I could under the circumstances.

Q. All right, have you discussed this case with anybody?

A. Oh, yes, sir.

Q. All right, and have these people expressed an opinion to you about this case?

A. Yes, sir.

Q. Could you tell me what those opinions were? Did they think the defendant was guilty?

A. I am afraid it was almost unanimous.

Q. Did you ever hear anybody state that they thought he was not guilty?

A. No, sir.

Q. All right, now out of all this I believe you told Mr. Kerr that you had formed an opinion.

A. Oh, yes.

Q. You have that opinion at this time?

A. Yes, sir.

Q. But now you feel even with this opinion you could set that all aside and sit here and listen what is presented in this court?

A. Yes, sir.

Q. Do you feel like there is no reason that anything you knew before would get in the way of your deliberations here?

A. I don't think it should.

Q. Well, I don't either, but -

A. Well, I am not sure I should answer yes or no. Would you rephrase that, please.

Q. Do you feel like, with all these accounts, and the opinion that you have, and the discussion with the other people, if you were selected for the jury could you set aside what you had heard and just render a verdict based solely on what was presented here in court, and not let anything else distract you or get in the way of your deliberations?

A. Yes, sir.

Q. You believe you could?

A. Yes, sir.

Q. Did you hear anything about the defendant's background, where he came from before he came to Port Smith?

A. Yes, sir.

Q. What did you hear?

A. He was a South Carolinian, and he was wanted there.

Q. Do you know what he was wanted for?

A. Yes, sir.

Q. What is that?

A. Double murder.



- Q. All right, do you recall anything about the alleged victims?
- A. Other than they were young.
- Q. You don't remember anything else?
- A. Huh uh.
- Q. Now, do you feel like it would take evidence on the part of the defendant to set aside this opinion you have? Something from the defendant's side of the case, or would you just be able to weigh what the State has presented?
- A. Well, as I understand it, I would be required to judge solely on the State's evidence, and therefore that is, as I see it, the only thing.
- Q. Do you feel that you would be able to presume the defendant innocent at this time despite your prior opinion, or the opinion you hold at this time?
- A. Well, no, sir, I don't think he is innocent but I think the State would be required to prove that he is guilty.
- Q. Now, are you telling me that, as a matter of law in our system of justice the defendant is presumed to be innocent, and that the burden is on the State to prove that he is guilty, and before he goes to trial that presumption stays with him. And I believe Mr. Karr discussed this with you.
- A. Yes, sir, it stays with him and not necessarily

with me.

- Q. You do not believe or presume this man to be innocent?
- A. Well, sir, I don't - I didn't understand the question to be that. As I understood the question was could I render a fair and impartial verdict.
- Q. All right. Of course, I probably am phrasing it somewhat differently than what Mr. Karr did. So just listen to what I am saying. Of course, just listen to my question and just answer it the best you can. And I am asking you at this time if you feel that you can presume the defendant innocent at this time?
- A. No, sir.
- Q. You do not?
- A. No, sir.

MR. SETTLE:

Your Honor, I am going to present this man for cause.

THE COURT:

All right, let me ask him. Under the law of this state every defendant in a criminal case is presumed to be innocent, and as you have heard several times the burden is upon the State to prove the guilt of any defendant beyond a reasonable



doubt. This presumption of innocence is actually evidence in behalf of the defendant, and stays with him until such time as the State is able to overcome their presumption and prove his guilty beyond a reasonable doubt. Now the Court tells you that that is the law, and that he is presumed to be innocent, and if you feel - and he is entitled to that presumption under the law. Now, if you honestly feel like you cannot presume his innocence the, of course, that is what we need to know. And if you feel like knowing that is the law, could you then follow the Court's instructions that that is the law, or do you feel like under the situation you could not presume his innocence at this time?

A. May I speak freely?

THE COURT: Yes, you may.

A. Well, let me then just discuss it with you, if I may. To be honest, I feel within myself that the defendant is guilty. It is hard to put that aside. But as to the question, yes, I can be

impartial, but the courts may assume his innocence, in other words, until he is proven guilty, but if he has already been tried and according to the evidence that I have heard and seen on television, I don't believe that I could honestly say that he is innocent, but I can be impartial. Am I clear?

THE COURT:

Yes. But would the fact that he has been tried in Sebastian County and convicted by a jury up there, do you honestly feel that that would, that you would give that any weight or consider that in determining his guilt in this trial?

A. No, sir, it would have to be on the evidence presented here.

THE COURT:

Now I know you are being entirely honest, and that is what I want you to be. But the Court will even instruct the jury at the close of the trial that under the law this defendant is presumed to be innocent, and it is evidence in his behalf, and he has no burden at all in this case.

Can you accept that as being the law and this defendant as he sits here now is innocent and will remain innocent under the law until such time as the State is able to prove his guilt beyond a reasonable doubt? If you can't, it is understandable. But if you can, that is what we need to know. Are you going to require him to establish his innocence?

A. Oh, no, sir.

THE COURT: You would not do that at all?

A. No, sir.

THE COURT: So would you put the entire burden on the State?

A. Yes, sir, that's where it belongs.

THE COURT: If he did not produce any evidence in his behalf, or any proof, would you hold him responsible, or would you look to the State to prove his guilt?

A. As I understand it, Your Honor, it is the State's burden to prove his guilt, and that then would be what I render a verdict on.

THE COURT:

You don't have any problem about that, and you will place the burden on the State of Arkansas?

A. Oh, yes, sir.

THE COURT:

Well, of course what we are back to again now, is can you in the starting out of the trial take the presumption that this man is innocent until he is proven guilty?

A. Well, I will state it this way, Your Honor. I think personally within myself, I think he is guilt. But yes, I can be impartial. Now, I don't know how we can resolve that.

THE COURT:

Well, of course, as both of the attorneys have told you, the fact that you have an opinion at this time as to his guilt or innocence does not disqualify you as a juror. The test is whether or not you can legally lay all these matters that you think you might have read, heard or seen completely out of your mind and whatever might have occurred in the other trial, and come into this court and try this case solely upon the evidence that you would hear here.

And I believe you have answered,  
can you do that?

A. Yes, sir.

THE COURT:

As Mr. Swindler sits here now, after  
I have told you what the law is, how  
do you regard him as far as the  
law is concerned? Do you regard  
him - I am not asking you about  
your opinion, but as far as the law  
is concerned, how do you regard him  
now as being innocent or guilty  
of this charge?

A. In the eyes of the court he is innocent.

THE COURT:

In the eyes of the law?

A. Yes, sir.

THE COURT:

Can you accept that?

A. Yes, sir.

THE COURT:

Do you accept it?

A. Yes, sir.

THE COURT:

All right, if you should be selected  
as a juror will you follow the Court's  
instructions as to that being the  
law in regard to him being innocent  
until such time as his guilt is  
established to your satisfaction,  
beyond a reasonable doubt?

A. Yes, sir.

THE COURT:

Will you require the State in this  
trial to do that?

A. Yes, sir.

THE COURT:

I believe he is good, so at this  
time I will overrule your motion  
for cause.

MR. SETTLE:

Save my exceptions, Your Honor.

BY MR. SETTLE:

Q. All right, now Mr. Bricksey, I assume at this  
time that you presume this defendant to be  
innocent?

A. In the eyes of the law.

Q. Your eyes, sir?

A. Oh, no, sir.

MR. SETTLE:

We are right back to the same point.

MR. KARR:

Your Honor, this is a legal pre-  
sumption. On the one hand, we are  
talking about an opinion, if it  
is not a fixed opinion as to guilt  
or innocence, he says he has got one.  
But on the other hand, he fully under-  
stands that the presumption of  
innocence is a legal presumption  
here. You know, to tell him that he  
has got to completely accept that  
and then set aside, he would have



no opinion, it is contradictory. And he says he understands his legal principle and he gives that and says he sees him as innocent in the eyes of the law, and he will force the State to meet its burden of proving his guilt beyond a reasonable doubt. And I think it is just the way that Mr. Settle is asking the question now. He is asking him two different questions. He is asking one question and getting an answer to another one. No, Your Honor, I disagree with that. I think that maybe Mr. Bricksey feels like he can accept theoretically this idea, but I don't think that practically he can accept it. I think he is being honest and truthful about it, and I feel that just does not accept that concept and practice in this case.

MR. SETTLE:

THE COURT:

As I understand it, he has an opinion as to the guilt of this defendant. He has freely admitted that. So as far as he is concerned, that opinion

at this time, as I understand him, is that the defendant is guilty. So now we are asking him if he regards him as being innocent, and it is contradictory to that extent. He can't have an opinion that he is guilty, and at the same time say he regards him as being innocent. And then I think the question must be as to whether or not, since I have told him what the law is, is whether or not he can lay aside his opinion at this time regardless, regarding this defendant as being innocent. Now, I can't resolve it either.

MR. SETTLE:

Your Honor, I think what it is, I know Mr. Bricksey has an opinion, and I believe he is honestly trying to set it aside. But I think that this answer is that he cannot really set that opinion aside, and I think that is really, he is answering that other question. And on that basis, I will submit him.

THE COURT:

Well, I don't want to ride a good



horse to death, but again, do you feel that you can set your opinion aside and try this case just on the law and the evidence?

- A. Well, I have worked for the school, and I have a family, and I have teenage daughters. And I am active in church work, and a lot of times you may form an opinion, but it is always my duty to listen to my daughters, and usually they may have mitigating circumstances in their lives, you know, about why they have been disobedient or haven't listened to me. But I have always tried to listen, and it is my duty to listen, especially in church affairs, and things of that nature. And even though you may form an opinion, then you are still required to listen and make a decision on the evidence. And yes, I can do that.

THE COURT: Again, I am going to overrule your motion.

MR. SETTLE: Save my exceptions.

BY MR. SETTLE:

- Q. All right, Mr. Bricksey, if you were selected for the jury do you believe that this information you have, information of the defendant's past

or whatever you heard about the incident, whatever you heard about the incident, you could set that completely aside?

- A. Yes, sir.
- Q. You would consider only what is presented in this court?
- A. Yeah.
- Q. You would follow the instructions of the Court?
- A. Yes, sir.
- Q. All right, you feel if you were deliberating if you were selected as a jury, if you were deliberating on the case do you feel that you would be comparing whatever accounts you remember with whatever the evidence was that was presented in court?
- A. No, sir.
- Q. You would just examine what was presented?
- A. Yes, sir.
- Q. Would it take any proof from the defendant's side to get any of these media accounts out of your mind? Would you require proof?
- A. I don't think they could be removed from my mind, the accounts, once it is there. Would you rephrase your question, please?
- Q. All right, if you were chosen as a juror and you were deliberating on the case, if your opinions, or these accounts were getting in the way of your

deliberations, would you report that to the Court?

A. After the case has gone to the jury? Please say that again.

Q. While you were deliberating on the case would you report to the Court if these previous opinion, or these previous reports and accounts were having any impact on your deliberations?

A. Yes, sir, I guess; I am not sure how the system works. I have served on a jury before but, what do you mean?

Q. Well, I mean if your impartiality was being threatened by these previous reports and opinions if you felt you could not be fully impartial.

A. Well, my impartiality would not be threatened.

Q. All right, are you related to any police officers or know any police officers?

A. I am not related to any that I am aware of.

Q. Do you know the local officers?

A. Oh, yes.

Q. Have they ever discussed this case with you?

A. Not to my knowledge.

Q. They have never expressed an opinion to you about this case?

A. Not the local police officers, no, sir.

Q. You have not discussed this with any other police officers?

A. No, sir.

Q. Okay, so if you were chosen as a juror you would not have to explain whatever verdict or sentence you came back with to them?

A. No, sir.

Q. You would feel that you could just make a decision without worrying about what somebody else would think?

A. That is the way it has always been.

Q. Now I am not sure, did you tell me where you were working? I think I may have missed that. Where did you say you were working?

A. I am a house painter and repairman.

Q. Yes, you did tell me that.

A. My wife and I.

Q. Now then the testimony may warrant the evidence and testimony presented in court may warrant that the Judge, the Court will instruct you on what are called lesser included offenses. Lesser included offenses of the homicide statutes. The most serious one is the one that the defendant is charged with, and it is capital felony murder. Lesser charges would be first degree murder, second degree murder or manslaughter. It would of course depend on what



the Court would feel would be appropriate. Now if the Court instructed you on these lesser offenses do you believe that you could consider them?

A. Yes, sir.

Q. I know Mr. Karr also discussed with you the procedure involved in one of these capital felony cases. Now I am just assuming for the purposes of this question, this is sort of hypothetical, but I am assuming that if you were selected for the jury, and assuming that the jury found the defendant guilty; now of course without having any of the evidence presented in court, without knowing what the State's case is going to be in court, do you feel that you could consider the penalty of life without parole as an alternative to the death penalty? Those are the two possible penalties in a case like this. The death sentence of life without parole. Do you feel you could consider life without parole?

A. Yes, sir.

Q. Do you feel you consider it equally with the death penalty?

A. Yes, sir.

Q. All right, now, referring to the police officers, I want to say that we anticipate that the State

will call some police officers to testify. Do you feel that you would weigh their testimony over a private citizen's, or would you weigh them equally?

A. Equally.

Q. You would weigh them equally; you would not give any greater weight to any person's testimony?

A. No, sir.

Q. Have you ever been a witness or a victim of a crime, or has any member of your family ever been a witness or a victim of a crime?

A. No, sir.

Q. All right, now do you feel if you were, assuming you were selected for the jury, when deliberating on a possible verdict, or a possible sentence that you could set aside whatever background information you had about the defendant and just concentrate on what is presented in court?

A. Yes, sir.

Q. Do you know of any reason why you could not give this defendant a fair trial on this case, along with the State?

A. No, sir.

MR. SETTLE:

That's all.

MR. KARR:

Mr. Bricksey is good for the State.



MR. SETTLE:

Your Honor, I would like to resubmit him for cause. I believe he knows too much about the defendant's background, and I believe he has stated that he has a solid opinion in this case, and I believe his answers are contradictory on that basis, and I move he be excused by the Court.

THE COURT:

I want to ask you about three more questions, and then I believe we can dispose of you one way or the other. You stated awhile ago that when I asked you in regard to the presumption of innocence, you said that under the law you could regard him as being innocent.

A. Yes, sir.

THE COURT:

You also stated, of course, that you have an opinion at this time as to his guilt.

A. Yes, sir.

THE COURT:

All right, you have answered and said that you could and would set that opinion aside if you should be selected, and that you would be able to, and would try the case

solely upon the evidence here in court?

A. Yes, sir.

THE COURT:

Can you and will you follow the instructions of the Court as to what the law of this state is, and be bound by whatever instructions the Court gives you, whether you agree with them or not, if the Court tells you that is the law?

A. Yes, sir.

THE COURT:

Will you do that, and can you do that?

A. Yes, sir.

THE COURT:

All right, your motion for cause will again be overruled.

MR. SETTLE:

Note my exceptions, Your Honor. Your Honor, he is excused.

THE COURT:

All right, let's take our noon recess. Court is in recess until 1:30.

(The time now being 1:30 p.m. court is reconvened from the noon recess)

VOIR DIRE EXAMINATION OF R. C. MAXWELL

BY MR. KARR:

Q. Mr. Maxwell, do you know anything about the facts of this case?